

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.PADMANABHAN NAIR

FRIDAY, THE 29TH JUNE 2007 / 8TH ASHADHA 1929

MACA.No. 886 of 2005()

OPMV.1221/1996 of MOTOR ACCIDENTS CLAIMS TRIBUNAL, MAVELIKKARA

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APPELLANT - PETITIONER:

**MATHEW VARGHESE,
PANDYALAYIL HOUSE, KARTHIKAPPALLY.**

BY ADV. SRI.PHILIP M.VARUGHESE

RESPONDENTS - RESPONDENTS:

**1. GOPI, VALETHEKKATHIL,
PUTHUKUNDAM, KARTHIKAPPALLY.**

**2. THE ORIENTAL INSURANCE CO.LTD.,
BRANCH OFFICE, P.B.NO.11, KAYAMKULAM.**

BY ADV. SRI.GEORGE CHERIAN (THIRUVALLA)

**THIS MOTOR ACCIDENT CLAIMS APPEAL HAVING BEEN FINALLY HEARD
ON 29/06/2007, THE COURT ON THE SAME DAY DELIVERED THE
FOLLOWING:**

K. PADMANABHAN NAIR, J.

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M.A.C.A. NO. 886 OF 2005

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Dated this the 29th day of June, 2007

J U D G M E N T

Petitioner in O.P(MV) No.1221 of 1996 on the file of the Motor Accidents Claims Tribunal, Mavelikara is the appellant. He met with a motor vehicle accident at 4.15 p.m. on 3.11.1990 and sustained injuries. Petitioner filed the O.P. claiming Rs.70,000/- as compensation impleading the owner-cum-driver and Insurer. Summons was ordered. But there was failure on the part of the petitioner in taking steps to issue notice on the owner-cum-driver. So the O.P. as against the owner-cum-driver was dismissed. Insurer alone appeared and contested the case. Though the Tribunal found that the accident occurred due to the negligence of the driver of the Autorikshaw bearing Reg.No.KRY-3729 and petitioner was entitled to get Rs.42,000/-, the claim was dismissed on the technical ground that the O.P. so far as it relates to the insured has already been dismissed.

2. After hearing both sides, I am of the view that it is only just and proper that the appellant be given an

opportunity to contest the case on merits. For that purpose dismissal of the O.P. as against the first respondent-owner has to be set aside and the matter is to be remanded for fresh consideration. Since the compensation is fixed without hearing the first respondent-driver-cum-owner, the same is also to be set aside. Tribunal shall give an opportunity to both sides including the first respondent to raise their contentions and let evidence.

In the result, the appeal is allowed. The award passed by the Tribunal dismissing O.P(MV) No.1221 of 1996 is hereby set aside. The order passed by the Tribunal dismissing the O.P. as against the first respondent is also set aside. Tribunal is directed to take O.P(MV) No.1221 of 1996 back to file and dispose of the same afresh in accordance with law. Appellant will be given an opportunity to take steps to issue notice to the first respondent. The first respondent shall also be given an opportunity to raise his contentions. It is open to both sides to amend pleadings or adduce further evidence. I make it clear that I am setting aside the findings only on a technical ground and this will not be a bar for the Tribunal to

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**came to the same conclusion in case the evidence warrants
such a conclusion.**

K. PADMANABHAN NAIR, JUDGE.

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K. PADMANABHAN NAIR, J.

M.F.A.

J U D G M E N T

29TH JUNE, 2007